EXHIBITS "A" AND "B" TO PETITION—Continued

Schedule B—2-h	Farming Stock and Implements	42 50
Schedule B—2-i	Shipping and Shares in Vessels	00
Schedule B—2-k	Machinery, Tools, etc.	00
Schedule B—2-l	Patents, Copyrights and Trade-Marks	00
Schedule B—2-m	Other Personal Property	00
Schedule B—3-a	Debts on Open Accounts	00
Schedule B—3-b	Stocks, Negotiable Bonds, etc.	00
Schedule B—3-c	Policies of Insurance	00
Schedule B—3-d	Unliquidated Claims	00
Schedule B—3-e	Deposits of Money in banks and elsewhere	00
Schedule B—4	Property in Reversion, Remainder, Trust, etc.	00
Schedule B—5	Property claimed to be exempted	00
Schedule B—6	Books, Deeds and Papers	00
	Schedule B, Total	$2,882 50
	Total	

Robert Page Wright, Petitioner, Vinton, R. F. D. #1 Va.

[fol. 6] IN UNITED STATES DISTRICT COURT

ORDER OF REFERENCE—Entered March 30, 1935

Robert Page Wright, of Bedford County, Virginia, a debtor, having on March 29, 1935, filed his petition under Section 75 of the Bankruptcy Act as amended by the Act of Congress of June 28, 1934, and the said petition appearing to be in proper form and to have been filed in good faith, it is

Ordered that said matter be, and the same is hereby, referred to James H. Rodgers, Esq., Big Island Virginia, Conciliation Commissioner for Bedford County, for further proceedings therein as are required by said section,

and that the said Robert Page Wright shall attend before said conciliation commissioner on the 5th day of April, 1935, at Big Island, Virginia, and thenceforth shall submit to such orders as may be made by said conciliation commissioner or by this court relating to the proceedings under this section.

The Deputy Clerk of this Court at Lynchburg will send an attested copy of this order to S. S. Lambeth, Jr., Esq., Attorney for the debtor, Bedford, Virginia, and a similar copy, together with the debtor's petition, to James H. Rodgers, Esq., Conciliation Commissioner, Big Island, Virginia.

IN UNITED STATES DISTRICT COURT

PROPOSAL TO CREDITORS—Filed September 27, 1935

Before the Conciliation Commissioner for Bedford County on July 27, 1935, to the Honorable Conciliation Commis-
[fol. 7] sioner for Bedford County, and the Creditors of said Debtor:

The undersigned Robert Page Wright, Debtor, respectfully submits the following proposal to his creditors:

Said Debtor has no desire to avoid the payment of his debts in full, if that be possible, although if the first lien creditors see fit to submit a proposition by way of compromise at a figure below the actual amount of said first lien debt, said Debtor will co-operate to the extent of his ability in raising the necessary funds.

But said Debtor does desire to submit a proposal for the extension of the time for the payment of his indebtedness. He suggests and proposes that he be granted a period of twelve months from July 27, 1935, within which to raise the necessary money to pay off the indebtedness against him and against his farm. But if this period is deemed too long, said Debtor is willing to consider a shorter period.

As a part of his proposal for extension said Debtor suggests that a definate effort be made to interest buyers in the purchase of the boxwood on his premises. Said Debtor has been informed that this boxwood once had a fair market value ranging between $1,000 and $1,200.00. He is not informed as to its present market value, but he is making

an effort to ascertain this. While its value has certainly diminished substantially, said Debtor thinks that it is yet sufficiently valuable to enable him to pay up all overdue interest, taxes, insurance premiums, if any are overdue, to provide for any insurance premiums to accrue, to provide for the payment of interest for, say, a year in advance, and to provide for taxes for such period.

Thus the investment would be made a live investment for the first lien creditor during the period indicated. The said Debtor specially asks the co-operation of his creditors and in particular of the first lien creditor towards securing a market for this boxwood, and towards the application of the proceeds from the sale thereof, as above indicated.

Said Debtor would further set forth that there is now pending in the Congress of the United States a bill known as the Frazier-Lemke Refinancing Bill, which provides for [fol. 8] loans up to the full value of farming lands based on existing appraisements, and further provides for an interest rate of only 1½% a year, and for repayment of the principal on the amortized plan at only 1½% per year, making the total annual charge on account of principal and interest of 3%, or, for illustration, of only $90 a year on a loan of $3,000.

This Refinancing Bill has not yet become a law. Said Debtor would not pretend to say that it will become a law. He does know, however, that there is a very strong sentiment in Congress for this Bill and that there is a reasonable probability that it will be enacted into law. He asks the extension aforesaid both because the boxwood may be turned into cash in the near future and because said Refinancing Bill may become a law in the near future.

It is the purpose of the said Debtor to make active effort immediately to sell the boxwood if the creditors shall agree upon this plan, and not to delay by reason of any extension of a year that may be granted him. To this he pledges himself and asks the co-operation of his creditors.

Respectfully submitted, Robert Page Wright. S. S. Lambeth, Jr., Attorney for Debtor, Robert Page Wright.

Endorsed: Before the Conciliation Commissioner, First Creditor's Meeting July 27, 1935.

IN UNITED STATES DISTRICT COURT

REPORT OF CONCILIATION COMMISSIONER—Filed September 27, 1935

In Proceedings Under Section 75 of the Bankruptcy Act

To the Honorable John Paul, Judge of the District Court of the United States for the Western District of Virginia:

[fol. 9] Conciliation Commissioner respectfully reports:

That in the matter of R. Page Wright, Debtor, Docket #3922 the first meeting of the creditors was held at Bedford with the Debtor present and represented by S. S. Lambeth, Jr., Attorney and the largest creditor was represented by Mr. A. C. Harris. The Debtor's attorney presented a plan of extension which plan was not accepted by Mr. Harris. However it was agreed that Mr. Wright and his attorney should be given a reasonable time in which to try to determine the exact amount the boxwood (which was to be sold under the plan of extension offered) could be sold for and when it could be sold and to report back to the Conciliation Commissioner at which time he would call a second meeting of the creditors. This report not having been received and therefore no agreement having been reached I am reporting to Your Honor these facts and asking for further instructions, if any, under the new Bankruptcy Act as amended.

This 25th day of Sept., 1935.

James H. Rodgers, Conciliation Commissioner.

IN UNITED STATES DISTRICT COURT

ORDER TO FILE AMENDED PETITION, ETC.—Entered September 28, 1935

Whereas the above-named Robert Page Wright on March 29, 1935, filed his petition under Section 75 of the Bankruptcy Act, which was duly referred to James H. Rogers, Esq., Conciliation Commissioner, for action thereon, and

Whereas it appears that the debtor has been unable to agree with his creditors upon any terms of composition or

extension of his indebtedness, but that said matter has been [fol. 10] since pending before said conciliation commissioner without any further action thereon,

It is accordingly Ordered that the said debtor shall within 15 days from this date file his amended petition under Section 75 of the Bankruptcy Act as amended by the Act of August 28, 1935, asking to be adjudged a bankrupt, or else shall suffer this proceeding to be dismissed.

It is further Ordered that if the debtor shall within the time limited file his amended petition asking to be adjudged a bankrupt, the same shall be forwarded by the Deputy Clerk of this Court at Lynchburg to the Judge of the Court for action thereon; and in case of the failure of said debtor to file said amended petition within the time limited, that the fact of such failure shall be reported to the Court by the Deputy Clerk at Lynchburg.

It is further Ordered that an attested copy of this order be sent to S. S. Lambeth, Jr., Esq., Attorney for the debtor, Bedford, Virginia, and a copy to James H. Roberts, Conciliation Commissioner, Big Island, Virginia.

IN UNITED STATES DISTRICT COURT

AMENDED PETITION UNDER SECTION 75, SUBSECTION (S) OF THE NATIONAL BANKRUPTCY ACT—Filed October 8, 1935

To the Honorable John Paul, Judge of the District Court of the United States for the Western District of Virginia, Lynchburg Division:

The Petition of Robert Page Wright of Stewartsville, in the County of Bedford (P. O. Vinton, R. 1, Va.), Western District, State of Virginia, farmer,

Respectfully Represents: That he has resided in Bedford County, Virginia, all his life within said Judicial District; that on March 29, 1935, he filed his petition as debtor, under Section 75 of the National Bankruptcy Act; that he failed to obtain the acceptance of any of his creditors of his [fol. 11] proposal for composition or extension as appears by order of Court herein entered September 28, 1935; that he now files his amended petition under subsection (s) of said Section 75; that he owes debts which he is unable to

pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to Bankruptcy.

That the schedule heretofore annexed, to his said petition filed as debtor on March 29, 1935, marked A [1, 2, 3, 4, 5], and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule heretofore annexed, to said petition (marked B [1, 2, 3, 4, 5, 6], and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

That petitioner has not been granted a discharge in bankruptcy within six years.

Wherefore Your Petitioner Prays, That he may be adjudged by the Court to be a bankrupt within the purview of said acts, and that he may have all of the benefits of the provisions of said sub-section (s), as amended, and approved August 28, 1935.

Robert Page Wright, Petitioner, Post Office, Vinton, R. 1, Va. S. S. Lambeth, Jr., Attorney for Petitioner, P. O. Drawer 236, Bedford, Va.

Duly sworn to by Robert Page Wright. Jurat omitted in printing.

[fol. 12] All the Schedules must be filed in triplicate with this Petition. If Schedules are not filed with Petition use form 801A. (Act of May 27, 1926.)

Oaths required by this act, except upon hearings in Court, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country (Bankruptcy Act of 1898, c. 4, Sec. 20).

IN UNITED STATES DISTRICT COURT

ORDER OF ADJUDICATION—Entered October 12, 1935

The above named debtor having heretofore filed his petition under Section 75 of the Bankruptcy Act and having failed to obtain an agreement with his creditors upon any terms of composition or extension and having on the 8th day of October, 1935, filed his amended petition under the provisions of Subsection (s) of Section 75 of the Bankruptcy Act as amended by the Act of August 28, 1935, praying that he be adjudged a bankrupt, it is accordingly

[fol. 13] Ordered that the said Robert Page Wright be, and he is hereby, adjudged a bankrupt and that this matter be referred to James H. Rogers, Esq., Conciliation Commissioner, at Big Island, Virginia, for further proceedings thereon in accordance with the provisions of Subsection (s) of said Section 75 of the Bankruptcy Act.

The Deputy Clerk of this Court at Lynchburg will send an attested copy of this order to S. S. Lambeth, Jr., Esq., Attorney for the debtor, at Bedford, Virginia, and the papers in the cause, together with a copy of this order, to James H. Rogers, Esq., Conciliation Commissioner, Big Island, Virginia.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION TO DISMISS—Entered January 8, 1936

In the Matter of ROBERT PAGE WRIGHT, Bankrupt

The above-named bankrupt having heretofore filed his petition under Section 75 of the Bankruptcy Act and it appearing that he was unable to agree with his creditors upon any terms of composition or extension of his indebtedness; and he thereafter having filed his amended petition under Subsection (s) of Section 75 of the Bankruptcy Act, which proceedings have been pending before a conciliation commissioner;

And the Vinton Branch of the Mountain Trust Bank having submitted its motion to this Court that the proceedings before the conciliation commissioner be terminated and that

this case be dismissed upon the ground that Subsection (s) of said Act is unconstitutional in that it deprives said creditor of its property without due process of law and that the debtor is not entitled to pursue the remedies and privileges granted therein; and the Court being of the opinion that the [fol. 14] provisions of Subsection (s) of Section 75 of said Act are unconstitutional, for the reasons heretofore set forth by it in the case of John Clayton Sherman, it is accordingly

Ordered that the said motion be granted and that the said petition be dismissed and all proceedings thereon be terminated.

The Deputy Clerk of this Court at Lynchburg will send an attested copy of this order to S. S. Lambeth, Jr., Attorney for the bankrupt, and a similar copy to the conciliation commissioner to whom this cause was referred.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

In the Matter of ROBERT PAGE WRIGHT, Bankrupt

ASSIGNMENT OF ERRORS—Filed April 8, 1936

To the Honorable Judges of the United States Circuit Court of Appeals for the Fourth Circuit:

And the said Robert Page Wright, Bankrupt, and petitioner herein, assigns the following error in the record and proceedings in said cause:

The District Court of the United States for the Western District of Virginia erred in holding unconstitutional subsection (s) of Section 75, of the National Bankruptcy Act, approved August 28, 1935, and known as the amended Frazier-Lemke Moratorium Act, in that said subsection (s), as amended, under which petitioner proceeded, is an Act of [fol. 15] Congress which was framed and phrased with the definite object in view of conforming said Act to the decision and the opinion of the learned Supreme Court of the United States announced in the case of the Louisville Joint Stock Land Bank v. Radford, in which case the original Frazier-Lemke Act was held unconstitutional.

Said petitioner respectfully submits that under the present Frazier-Lemke Moratorium Act no single right is conferred upon the debtor which is not subject to the veto of

the creditor or to the discretion of the Court, that as said Act confers no vested right upon the debtor, it cannot and does not deprive the creditor of any vested right and that if it does not deprive the creditor of a vested right, or of any right, it cannot violate any constitutional provision.

For which error the said Robert Page Wright, Bankrupt, and petitioner herein, prays that the said decretal order of the said United States District Court for the Western District of Virginia, dated the 8th day of January, 1936, in the above-entitled cause, be reversed, and the cause remanded with direction to said District Court to take such proceedings as Your Honors may deem proper, and for such other and further relief as may be proper in the premises.

Robert Page Wright, Bankrupt, Petitioner; S. S. Lamberth, Jr., Attorney and Solicitor for Petitioner, Bedford, Virginia.

STATE OF VIRGINIA, to-wit:

Subscribed and sworn to before me this 25th day of January, 1936, by Robert Page Wright, Bankrupt.

Frank L. Mitchell, Notary Public for Roanoke County, Va. My commission expires the 19th day of April in the year 1937. (Seal.)

[fol. 16] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO CONTENTS OF RECORD—Filed April 20, 1936

It is stipulated and agreed between counsel as follows:

The record on appeal in the above entitled cause shall consist of the following items—

(1) The original petition filed in the District Court of the United States for the Western District of Virginia, for composition or extension.

(2) The Summary of debts and assets filed with said last named petition. Said summary is found on the last sheet of the schedules filed by said Robert Page Wright, and shows the totals of his schedules A and B.

(3) A copy of the order of the said District Court of the United States, entered in said cause on the 30th day of March, 1935.

(4) A copy of the proposal of said Robert Page Wright to his creditors for extension, which proposal was filed before the Conciliation Commissioner for Bedford County on July 27, 1935.

(5) A copy of the report of said conciliation commissioner dated the 25th day of September, 1935, and likewise a copy of any other report, or reports, if any, which have been filed by said conciliation commissioner.

(6) A copy of the order of said District Court entered on the 28th day of September, 1935.

(6a) A copy of the Amended Petition filed by said Robert Page Wright.

[fol. 17] (7) A copy of the order of said District Court entered on the 12th day of October, 1935.

(8) A copy of the order of said District Court entered on the 8th day of January, 1936.

(9) The data required by section (7) of Rule 14, of the United States Circuit Court of Appeals for the Fourth Circuit.

(10) The petition for appeal and the assignment of errors and prayer for relief, filed by said Robert Page Wright, in the United States Circuit Court of Appeals for the Fourth Circuit.

(11) The stipulations of counsel.

(12) Any other paper, document or matter, which the Judge of the District Court of the United States for the Western District of Virginia may deem necessary or proper to complete the record, or to correct any inadvertence.

(13) The record shall be printed under the supervision of the Clerk of the Circuit Court of Appeals for the Fourth Circuit in accordance with Rule 23.

(14) It is agreed, subject to the approval of the Courts, that any other document or record, which may have been omitted by oversight, or which may be subsequently deemed necessary, by any party to this proceeding, may be made a part of the record.

Robert Page Wright, Bankrupt, by S. S. Lambeth, Jr., Solicitor. Vinton Branch of the Mountain Trust Bank, of Roanoke, Virginia, by John Strickler, Solicitor. A. C. Harris, Trustee, by John Strickler, Solicitor.

[fol. 18] IN UNITED STATES DISTRICT COURT

MEMORANDUM OF CLERK

(As Required by Section 7, Rule 14)

1. Petition for Appeal Filed April 8, 1936.

2. Order Allowing Appeal, signed by Judge, John J. Parker, Judge U. S. Circuit Court of Appeals for the Fourth Circuit, April 6, 1936, received and entered in U. S. District Court, W. Dist. of Va., at Lynchburg, April 8th, 1936.

3. Bond, for costs, in penalty of $250.00. W. A. Fitzpatrick, as principal, and E. D. English, as surety. Approved April 20, 1936.

4. Citation, dated April 6, 1936. Service of the within citation is accepted, and legal service thereof is waived by the undersigned, this 15th day of April, 1936. Vinton Branch of the Mountain Trust Bank of Roanoke, Virginia, by John Strickler, Its Attorney. A. C. Harris, Trustee, By John Strickler, His Attorney.

C. E. Gentry, Clerk, by Louis H. Price, Deputy Clerk.

IN UNITED STATES DISTRICT COURT

ORDER TO TRANSMIT RECORD

And thereupon it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating; be transmitted to the United States Circuit Court of Appeals for the Fourth Circuit; and the same is transmitted accordingly.

C. E. Gentry, Clerk, by Louis H. Price, Deputy Clerk.

[fols. 19-20] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 21] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 4016

ROBERT PAGE WRIGHT, Bankrupt, Appellant,

versus

VINTON BRANCH OF THE MOUNTAIN TRUST BANK OF ROANOKE, VIRGINIA, and A. C. HARRIS, Trustee, Appellees

On Appeal to Superintend and Revise, in Matter of Law, Proceedings of the District Court of the United States for the Western District of Virginia, at Lynchburg. In Bankruptcy

DOCKET ENTRIES

February 3, 1936, petition for an appeal under section 24b of the Bankruptcy Act, together with certified copy of order of District Court and assignment of errors filed, and petition docketed.

Same day, the appearance of S. S. Lambeth, Jr. is entered for the appellant.

April 6, 1936, (April term, 1936) petition for an appeal under section 24b of the Bankruptcy Act is presented in Open Court and argument had in support thereof before Parker, Northcott and Soper, Circuit Judges, and submitted.

[fol. 22] Same day, order allowing appeal and fixing cost bond at $250 is filed.

Same day, citation, signed by Judge Parker, is issued. Returnable within forty days.

April 7, 1936, the original petition for appeal, certified copy of order of District Court, assignment of errors, order allowing appeal, and citation are transmitted to the Clerk of the District Court at Lynchburg, Va., in accordance with Rule 36.

April 25, 1936, the transcript of record is filed.

Same day, the original petition for appeal, certified copy of order of District Court, order allowing appeal, and citation are returned by the Clerk of the District Court.

Same day, the original bond is certified up in accordance with section 7 of Rule 14.

April 28, 1936, the original assignment of errors are returned by the Clerk of the District Court.

May 1, 1936, twenty-five copies of the printed record are filed.

May 2, 1936, the appearance of John Strickler is entered for the appellees.

May 28, 1936, the appearance of Wm. Lemke is entered for the appellant.

Argument of Cause

June 16, 1936, (June term, 1936) cause came on to be heard, together with Nos. 4019, 4023, 4036, 4051 and 4069, before Parker, Northcott and Soper, Circuit Judges, and is argued by counsel and submitted.

[fols. 23-24] In United States Circuit Court of Appeals, Fourth Circuit

[Titles omitted]

[fol. 25] (Argued June 16, 1936. Decided October 6, 1936)

[fol. 26] Before Parker, Northcott and Soper, Circuit Judges

S. S. Lambeth, Jr., Ted Dalton and William Lemke (Philip Williams and G. E. Pence on brief) for Appellants, and John Strickler; William D. Staples; S. V. Kemp and F. S. Tavenner (Samuel H. Williams; B. B. Campbell; Showalter, Parsons, Kuyk & Coleman; John S. Draper; Hal C. Tyler and W. J. Henson on brief) for Appellees.

Opinion—Filed October 6, 1936

Parker, Circuit Judge:

These are six appeals from the same district in cases wherein relief was sought under the amended Frazier-Lemke Act. Act of Aug. 28, 1935, Sec. 6, 49 Stat. 942, 11 U. S. C. A. 203(s). The learned judge below, for reasons set forth in his opinion in In re Sherman 12 Fed. Supp. 297, denied the relief prayed in each of the cases on the ground that the act was violative of rights guaranteed by the Constitution, and the debtors have appealed. The appeals were heard together in this court and together they

present but one question, i. e. the constitutional validity of the amended Frazier-Lemke Act.

In Louisville Bank v. Radford 295 U. S. 555, the original Frazier-Lemke Act was held violative of the Fifth Amendment to the Constitution of the United States in that it deprived the holder of an antecedent Kentucky mortgage of the following rights with respect to his security, viz.:

"1. The right to retain the lien until the indebtedness thereby secured is paid.

"2. The right to realize upon the security by a judicial public sale.

[fol. 27] "3. The right to determine when such sale shall be held, subject only to the discretion of the court.

"4. The right to protect its interest in the property by bidding at such sale whenever held, and thus to assure having the mortgaged property devoted primarily to the satisfaction of the debt, either through receipt of the proceeds of a fair competitive sale or by taking the property itself.

"5. The right to control meanwhile the property during the period of default, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt."

The amended act by its terms applies to existing mortgages as well as to those subsequently executed and those here involved were in existence at the time of its passage. As pointed out by the learned judge below the rights of the secured creditor under the laws of Virginia are not materially different, for the purposes of this inquiry, from the rights recognized by the law of Kentucky (Code of Virginia sec. 5167); and we agree with him that these rights, as specified in paragraphs 3 and 5 of the above quotation, are violated by the amended act, i. e. the right to determine when the mortgage sale shall be held, subject only to the discretion of the court, and the right to control meanwhile the property, subject only to the discretion of the court, and to have the rents and profits collected by a receiver for the satisfaction of the debt.

The amended act provides that any farmer who fails to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition

or extension proposal, or who feels aggrieved by the composition or extension, may ask that he be adjudged a bankrupt, that his property be appraised, that the exemptions allowed by state law be allotted to him and that he be allowed to retain possession under the supervision and control of the court of the remainder of his property. The act then prescribes the duty of the court in the premises in subsections (1), (2) and (3), which are the ones material to [fol. 28] the inquiry before us, and which for convenience of reference are inserted in the margin.*

---

* "(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

"(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among

An examination of these sections discloses that, with respect to the time of foreclosure, the court is required to enter an order that "the possession under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for", subject to existing mortgages, etc.; and the court is required to stay foreclosure proceedings for a period of three years. The court, it is true, may require the debtor to make payments on the principal of the indebtedness "not inconsistent" with his "ability to pay, with a view to his financial rehabilitation", and may direct sale if the debtor fails to comply with this requirement. And, under section 6 of the act, the court may shorten the stay of proceedings if it shall determine that [fol. 29] emergency which gave rise to the act has ceased to exist. But we think it clear that these are far from preserving to the secured creditor the right to immediate foreclosure on default which is given him by the law of Virginia; and they are far different from the judicial discretion exercised by a court of equity in an ordinary

---

the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this title, and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabili-ation.

"(3) At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: Provided, That upon request of any secured or unsecured

foreclosure proceeding, with respect to which the rights of a mortgage creditor may be presumed to have been acquired. See Louisville Bank v. Radford, supra, 295 U. S. 555, 597.

Likewise as to the control of the property preceding foreclosure, an examination of the statute discloses that, instead of providing for possession by a receiver with application of the rents and profits to the mortgage debt, the debtor is permitted to retain possession, upon such rent as the court may determine, to be applied first to taxes upon the upkeep of the property, i. e. in a manner which will be for the benefit of the debtor, whether the creditor [fol. 30] wishes such application or not. This is clearly not the same thing as the right to which the creditor is entitled under the law of Virginia, or the equivalent thereof.

Cases in which this statute has been considered and held invalid are U. S. Nat. Bank of Omaha v. Pamp (C. C. A. 8th) 83 Fed. (2d) 493; In re Lowmon (C. C. A. 7th)

---

creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: Provided, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this title. If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this title."

79 Fed. (2d) 887; In re Young (D. C. Ill.) 12 Fed. Supp. 30; In re Lindsay (D. C. Ia.) 12 Fed. Supp. 625; In re Davis (D. C. N. Y.) 13 Fed. Supp. 221; In re Diller (D. C. Cal.) 13 Fed. Supp. 249; In re Tschoepe (D. C. Tex.) 13 Fed. Supp. 371; In re Schoenleber (D. C. Neb.) 13 Fed. Supp. 375; In re Wogstad (D. C. Wyo.) 14 Fed. Supp. 72. Contra, see Dallas Joint Stock Land Bank v. Davis (C. C. A. 5th) 83 Fed. (2d) 322; In re Slaughter 13 Fed. Supp. 893, id. 12 Fed. Supp. 206; In re Bennett 13 Fed. Supp. 353; In re Cole 13 Fed. Supp. 283; In re Reichert 13 Fed. Supp. 1.

The decision of the Supreme Court in Louisville Bank v. Radford, supra, as we interpret it, is that Congress may not in the exercise of the bankruptcy power substantially impair the rights of a mortgagee of a bankrupt's property, and that to take from him the right to determine when the sale of the mortgaged property shall be held and to control the property in the meantime, is such substantial impairment. We can see no ground for distinction in that the amended act grants a moratorium of three instead of five years or that the court is authorized to shorten the moratorium if it shall determine that the emergency has ceased to exist. Even if the last named provision be constitutional, it does not remove the objection that during the moratorium allowed the rights of the mortgagee are abridged; but it would seem that such a provision violates the constitutional requirement of geographical uniformity and would be void for that reason even if not given the effect of invalidating the remainder of the act. A law which extends the benefit of its provisions to certain judicial districts of the country and not to others, depending upon a finding by the courts as to local financial conditions, is manifestly not a uniform law on the subject of bankruptcies within the constitutional requirement. U. S. Nat. Bank of Omaha v. Pamp (C. C. A. 8th) 83 Fed. (2d) 493, 502.

[fol. 31] In No. 4023, appeal was not sought under Section 24(b) of the Bankruptcy Act but was allowed by the judge below under 25(a). As the order appealed from dismissed a petition for adjudication under subsection (s) of Section 75 of the Bankruptcy Act and refused to adjudicate petitioner a bankrupt thereunder, we think that appeal under 25(a) was proper, although appeal under 24(b) is

proper from an order denying injunctive relief under the statute. Bradford v. Fahey (C. C. A. 4th) 76 Fed. (2d) 628.

Affirmed.

In United States Circuit Court of Appeals, Fourth Circuit

No. 4016

Robert Page Wright, Bankrupt, Appellant,

vs.

Vinton Branch of the Mountain Trust Bank of Roanoke, Virginia, and A. C. Harris, Trustee, Appellees

On Appeal to Superintend and Revise, in Matter of Law, Proceedings of the District Court of the United States for the Western District of Virginia

Judgment—Filed and Entered October 6, 1936

[fol. 32] This Cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Virginia, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed with costs.

October 6th, 1936.

John J. Parker, Senior Circuit Judge.

October 17, 1936, petition of appellant for a stay of the mandate is filed.

In United States Circuit Court of Appeals

Order Staying Mandate—Filed and Entered October 22, 1936

It is Ordered that the mandate of this Court in each of the above causes be, and the same are hereby stayed, pending the application of said Appellants or any one or more

of them in the Supreme Court for a writ of certiorari to this Court, unless otherwise ordered by this or the said Supreme Court, and provided said application or applications are filed in the said Supreme Court on or before November 6, 1936.

It is Further Ordered that the time within which the parties hereto may apply for a rehearing in any of said causes is hereby extended for said period; and in the event certiorari is granted by the Supreme Court in said causes or in any one or more of them the time for applying for a rehearing is hereby extended for a period of 15 days after decision of the Supreme Court in said cause or causes.

October 22, 1936.

John J. Parker, Senior Circuit Judge.

[fol. 33] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 34] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 21, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,070. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 530. Robert Page Wright, Bankrupt, petitioner, vs. Vinton Branch of The Mountain Trust Bank of Roanoke, Virginia, and A. C. Harris, Trustee. Petition for a writ of certiorari and exhibit thereto. Filed November 16, 1936. Term No. 530, O. T., 1936.